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APPENDIX

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FILED

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JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1969

No. 24

JOSEPH WALLER, JR.,

Petitioner,

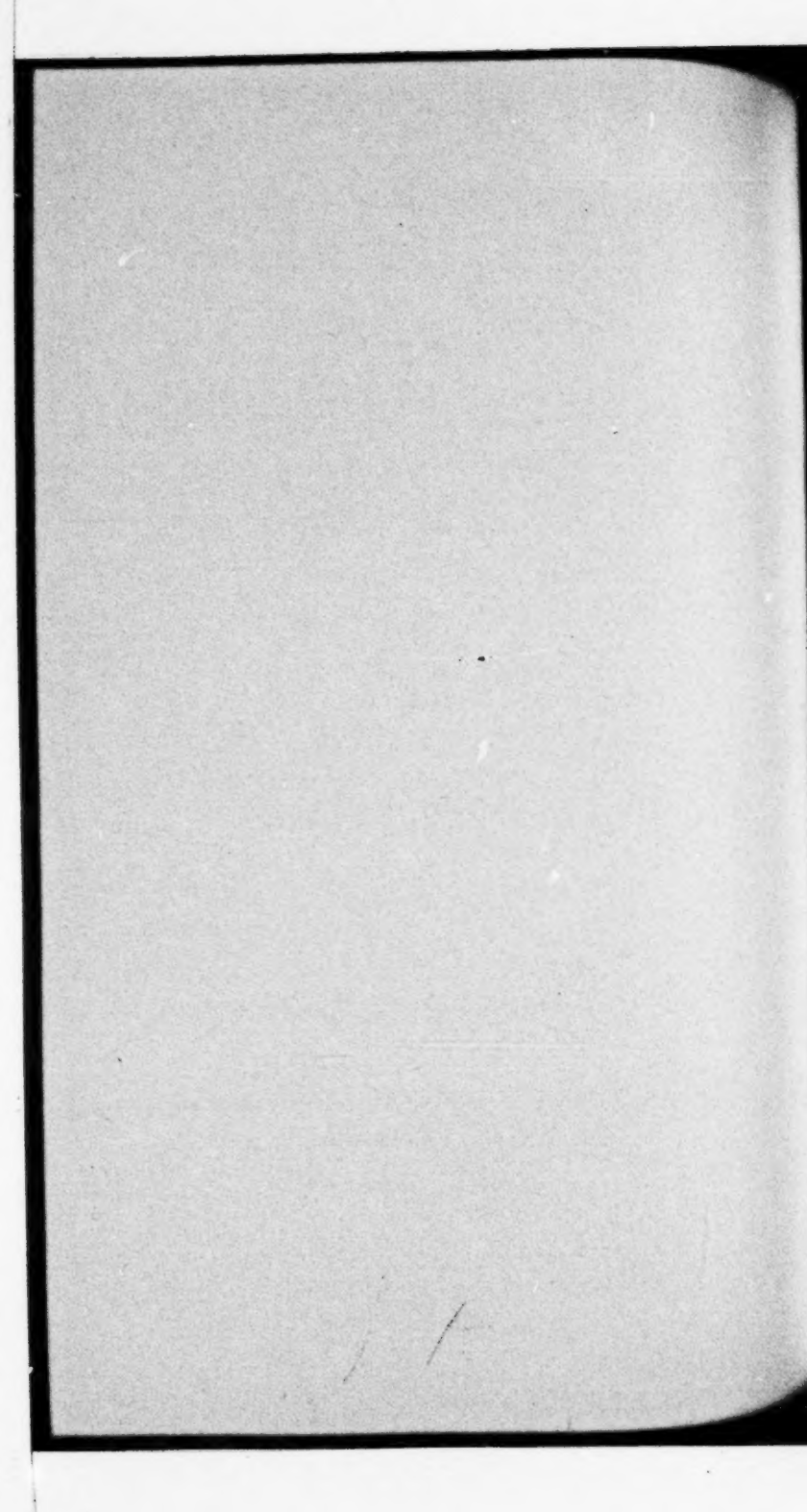
versus

STATE OF FLORIDA,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL
OF FLORIDA, SECOND DISTRICT

PETITION FOR WRIT OF CERTIORARI
FILED DECEMBER 16, 1968
CERTIORARI GRANTED JUNE 23, 1969



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Motion to quash information	Apr. 24, 1967
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Direct Information for Grand Larceny

[R-1]

IN THE CIRCUIT COURT FOR THE
SIXTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR PINELLAS COUNTY

FALL TERM, in the year of our Lord
one thousand nine hundred sixty-six

16,743 Ct. Cr.

STATE OF FLORIDA,

VS.

JOHN WESLEY BRYANT, LEMUEL GREEN, CRAWFORD LOUIS
JONES, JOSEPH WALLER, JR., JOSEPH WALLS (*EM—*
"s" in Walls deleted—amended instanter 2/2/67),
TOMMY WILLIAMS.

In the Name and by the Authority of the State of Florida:

CLAIR A. DAVIS, State Attorney for the Sixth Judicial
Circuit of Florida, in and for Pinellas County, prosecuting
for the State of Florida, in the said County, under oath,
information makes that John Wesley Bryant, Lemuel
Green, Crawford Louis Jones, Joseph Waller Jr., Joseph
Walls (*EM—"s" in Walls deleted—amended instanter*
2/2/67) and Tommy Williams of the County of Pinellas
and State of Florida, on the 29th day of December in the

year of our Lord, one thousand nine hundred sixty-six, in the County and State aforesaid, one painting, of a value in excess of \$100.00, lawful money of the United States of America, a more particular description of which painting is to the State Attorney unknown, of the goods, chattels and property of the City of St. Petersburg, Florida, a municipal corporation, then and there being found, did feloniously steal, take and carry away; contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Florida.

CLAIR A. DAVIS

*State Attorney for the Sixth Judicial
Circuit of the State of Florida,
prosecuting for said State*

Information for Unlawful Assembly

[R-2]

IN THE CIVIL AND CRIMINAL COURT OF RECORD OF
PINELLAS COUNTY, FLORIDA

JANUARY TERM, in the year of our Lord
one thousand, nine hundred and sixty-seven

STATE OF FLORIDA,

VS.

JOSEPH WALLER, JR.

In the Name and by the Authority of the State of Florida:

ALAN R. WILLIAMS, Prosecuting Attorney, for the County of Pinellas, prosecuting for the State of Florida, in said County, under oath, information makes that Joseph Waller, Jr. of the County of Pinellas and State of Florida on the twenty-ninth day of December in the year of our Lord, one thousand, nine hundred sixty-six, in the County and State aforesaid, did then and there meet together with two or more persons to commit a breach of the peace, or to do any other unlawful act, contrary to Section 870.02, Florida Statutes, and Contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

ALAN R. WILLIAMS
Prosecuting Attorney,
Pinellas County, Florida

**Information for Malicious Destruction of
Public Property**

[R-3]

IN THE CIVIL AND CRIMINAL COURT OF RECORD OF
PINELLAS COUNTY, FLORIDA

JANUARY TERM, in the year of our Lord
one thousand, nine hundred and sixty-seven

STATE OF FLORIDA,

VS.

JOSEPH WALLER, JR.

In the Name and by the Authority of the State of Florida:

ALAN R. WILLIAMS, Prosecuting Attorney, for the County of Pinellas, prosecuting for the State of Florida, in said County, under oath, information makes that Joseph Waller, Jr. of the County of Pinellas and State of Florida on the twenty-ninth day of December in the year of our Lord, one thousand, nine hundred sixty-six, in the County and State aforesaid, did then and there wantonly, willfully, or maliciously, mar, deface, injure, or mutilate a mural, which was part of the contents of a public building, contrary to Section 822.03, Florida Statutes, and Contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

ALAN R. WILLIAMS
Prosecuting Attorney,
Pinellas County, Florida

Information for Resisting Arrest Without Violence

[R-4]

IN THE CIVIL AND CRIMINAL COURT OF RECORD OF
PINELLAS COUNTY, FLORIDA

JANUARY TERM, in the year of our Lord
one thousand, nine hundred and sixty-seven

STATE OF FLORIDA,

VS.

JOSEPH WALLER, JR.

in the Name and by the Authority of the State of Florida:

ALAN R. WILLIAMS, Prosecuting Attorney, for the County of Pinellas, prosecuting for the State of Florida, in said County, under oath, information makes that Joseph Waller, Jr. of the County of Pinellas and State of Florida on the twenty-ninth day of December in the year of our Lord, one thousand, nine hundred sixty-six, in the County and State aforesaid, did obstruct or oppose Sgt. Les Hoffman, St. Petersburg Police Department, while in the lawful execution of a legal duty, which consisted of arresting Joseph Waller, Jr. for malicious destruction of public property, contrary to Section 843.02, Florida Statutes, and Contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

ALAN R. WILLIAMS
*Prosecuting Attorney,
Pinellas County, Florida*

Complaint and Judgment on Charge of Destruction of City Property

DATE OF VIOLATION: 12-29-66 (12-51)
 NAME: Joseph H. M. Walters Jr.
 RESIDENCE: 2450 - Harrington Ave 30
 PLACE EMPLOYED: _____
 OCCUPATION: _____ D.O.B. 10-4-41 RACE M SEX M
 CH/OP NO. _____ STATE _____ YEAR _____
 VEH. LIC. NO. _____ STATE _____ YEAR _____
 MAKE _____ BODY TYPE _____ YEAR _____ COLOR _____
 DID UNLAWFULLY COMMIT THE FOLLOWING OFFENSE WITHIN THIS MUNICIPALITY.
 NAMELY AT: 005 5 ST 2 AVE N

SPEEDING _____ M.P.H. IN _____ M.P.H. ZONE		<input type="checkbox"/> FROM WRONG LANE
IMPROPER LEFT TURN <input type="checkbox"/> NO SIGNAL <input type="checkbox"/> CUT CORNER	<input type="checkbox"/> PROHIBITED	
IMPROPER RIGHT TURN <input type="checkbox"/> NO SIGNAL <input type="checkbox"/> INTO WRONG LANE	<input type="checkbox"/> PROHIBITED	
		<input type="checkbox"/> FROM WRONG LANE
TRAFFIC SIGNAL VIOLATION (WHEN LIGHT TURNED RED)	<input type="checkbox"/> PASSED MIDDLE INTERSECTION	<input type="checkbox"/> MIDDLE OF INTERSECTION
	<input type="checkbox"/> NOT REACHED INTERSECTION	
STOP SIGN VIOLATION	<input type="checkbox"/> WRONG PLACE	<input type="checkbox"/> WALK SPEED <input type="checkbox"/> FASTER
IMPROPER PASSING AND LANE USAGE	<input type="checkbox"/> AT INTERSECTION <input type="checkbox"/> CUT IN	<input type="checkbox"/> WRONG SIDE OF PAYMENT
	<input type="checkbox"/> BETWEEN TRAFFIC <input type="checkbox"/> ON RIGHT, <input type="checkbox"/> ON GRADE	
	<input type="checkbox"/> LANE STRADDLING <input type="checkbox"/> WRONG LANE <input type="checkbox"/> ON CURVE	
FAILURE TO YIELD RIGHT OF WAY	<input type="checkbox"/> FROM PRIVATE DRIVE	<input type="checkbox"/> FROM STOP/YIELD SIGN
	<input type="checkbox"/> WHEN TURNING LEFT	
OTHER <u>Destruction of City Property</u>		
IN VIOLATION OF <u>25.14</u> (A STATE STAT.)		
SLIPPERY PAVEMENT <input type="checkbox"/> WET <input type="checkbox"/> RAIN <input type="checkbox"/> NIGHT	CAUSED PERSON TO DODGE <input type="checkbox"/> DRIVER <input type="checkbox"/> PEDESTRIAN	PD <input type="checkbox"/> PI <input type="checkbox"/> FATAL <input type="checkbox"/>
DARKNESS <input type="checkbox"/> UNLIGHTED <input type="checkbox"/> CROSS	JUST MISSED ACCIDENT BY APPROX. _____ FT.	<input type="checkbox"/> PED <input type="checkbox"/> VEHICLE <input type="checkbox"/> HIT FIXED OBJECT
OTHER TRAFFIC PRESENT <input type="checkbox"/> ONCOMING <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> SAME DIRECTION		<input type="checkbox"/> RIGHT ANGLE <input type="checkbox"/> HEAD ON <input type="checkbox"/> SIDE SWIPE <input type="checkbox"/> REAR END <input type="checkbox"/> RAN OFF ROADWAY <input type="checkbox"/> INTERSECTION
HIGHWAY TYPE <input type="checkbox"/> 2 LANE <input type="checkbox"/> 3 LANE <input type="checkbox"/> 4 LANE	<input type="checkbox"/> 4 LANE 1 WAY DIVIDED	
AREA <input type="checkbox"/> RURAL <input type="checkbox"/> RESIDENTIAL <input type="checkbox"/> SCHOOL <input type="checkbox"/> BUSINESS <input type="checkbox"/> OTHER		

THE UNDERSIGNED FURTHER STATES THAT HE HAS JUST AND REASONABLE GROUNDS TO BELIEVE, AND DOES BELIEVE, THAT THE PERSON NAMED ABOVE COMMITTED THE OFFENSE HEREIN SET FORTH, CONTRARY TO LAW, SWORN TO AND SUBSCRIBED BEFORE ME

PR NO. 6690

THIS 29 DAY OF DEC 19 66 H. J. R. Pico
 (SIGNATURE OF OFFICER OR COMPLAINANT)
 (NOTARY PUBLIC) (ADDRESS OF COMPLAINANT)

COURT APPEARANCE 5 DAY OF NOV 19 66 AT 9:00 A.M.
 I HEREBY AFFIX MY SIGNATURE WITH THE UNDERSTANDING THAT SUCH IS NOT A PLEA OF GUILTY, BUT TO CERTIFY THAT I HAVE RECEIVED A SUMMONS COPY OF THIS CITATION AND AGREE TO APPEAR AT THE TIME AND PLACE INDICATED.

SIGNATURE: _____

11/6

RAIL POSTED \$ 2.00

POSTED BY: [Signature]

RAIL TAKEN BY: [Signature]

FINE IN THE AMOUNT OF \$ 200
RECEIVED AS REQUIRED BY COURT SCHEDULE:

CLERK

BOND FORFEITED BY: 200

JAN 5 1967

CONTINUED TO: 7-30 REASON: for bail

CONTINUED TO: 7-30 REASON: WASON

CONTINUED TO: _____ REASON: _____

ARRAIGNMENT, JUDGMENT, SENTENCE AND ORDER

SAID DEFENDANT WAS ARRAIGNED FOR TRIAL JAN 30 1967
AND ENTERED A PLEA OF not GUILTY TO THE CHARGE AS SET FORTH HEREIN.

AFTER HEARING THE EVIDENCE AND DULY CONSIDERING THE SAME, THE COURT
FINDS YOU, THE DEFENDANT, GUILTY OF SAID CHARGE; AND IT IS
ORDERED AND ADJUDGED THAT YOU, THE DEFENDANT, ARE GUILTY
AS CHARGED OF SAID OFFENSE, AS SET FORTH HEREIN.

IT IS, THEREFORE, THE JUDGMENT, ORDER AND SENTENCE OF THE COURT
THAT YOU, THE DEFENDANT, BE:

FINED \$ _____
JAILED FOR 90 DAYS

IN THE CITY JAIL AT ST. PETERSBURG, FLORIDA

_____ SUSPENDED CONDITION _____

ATTEND _____ TRAFFIC SCHOOL SESSIONS

DRIVERS LICENSE REVOKED _____ MONTHS

NUMBER OF PENALTY POINTS ASSESSED _____

DONE, ORDERED AND ADJUDGED BY OPEN COURT AT ST. PETERSBURG, FLA.

JAN 30 1967
ON _____ JUDGE HENRY ESTEVA

ATTORNEY [Signature] PHONE _____

APPEAL BOND OF \$ _____

Complaint and Judgment on Charge of Disorderly Breach of the Peace

[R-6]

DATE OF CITATION: 12-15-1966 TIME OF CITATION: 12:15
 DATE OF VIOLATION: 12-15-1966 TIME OF VIOLATION: 12:15
 NAME: JOSEPH ROSE WARDEN
 RESIDENCE: 2450 - HARRINGTON AVE
 PLACE EMPLOYED: _____
 OCCUPATION: _____ D.O.B. 10-4-41 RACE N SEX M
 CH/OP NO. _____ STATE _____ YEAR _____
 VEH. LIC. NO. _____ STATE _____ YEAR _____
 MAKE _____ BODY TYPE _____ YEAR _____ COLOR _____
 DID UNLAWFULLY COMMIT THE FOLLOWING OFFENSE WITHIN THIS MUNICIPALITY
 NAMELY AT: STATE COORIN CENTRAL

SPEEDING _____ M.P.H. IN _____ M.P.H. ZONE		<input type="checkbox"/> FROM WRONG LANE	NAME
IMPROPER LEFT TURN <input type="checkbox"/> NO SIGNAL <input type="checkbox"/> CUT CORNER	<input type="checkbox"/> PROHIBITED	<input type="checkbox"/> PROHIBITED	
IMPROPER RIGHT TURN <input type="checkbox"/> NO SIGNAL <input type="checkbox"/> INTO WRONG LANE	<input type="checkbox"/> FROM WRONG LANE	<input type="checkbox"/> FROM WRONG LANE	A-91304
TRAFFIC SIGNAL VIOLATION (WHEN LIGHT TURNED RED) <input type="checkbox"/> PASSED MIDDLE INTERSECTION <input type="checkbox"/> MIDDLE OF INTERSECTION <input type="checkbox"/> NOT REACHED INTERSECTION			
STOP SIGN VIOLATION <input type="checkbox"/> WRONG PLACE <input type="checkbox"/> WALK SPEED <input type="checkbox"/> FASTER			A-91304
IMPROPER PASSING AND LANE USAGE <input type="checkbox"/> AT INTERSECTION <input type="checkbox"/> CUT IN <input type="checkbox"/> WRONG SIDE OF PAVEMENT <input type="checkbox"/> BETWEEN TRAFFIC <input type="checkbox"/> ON RIGHT <input type="checkbox"/> ON GRADE <input type="checkbox"/> LANE STRADDLING <input type="checkbox"/> WRONG LANE <input type="checkbox"/> ON CURVE			
FAILURE TO YIELD RIGHT OF WAY <input type="checkbox"/> FROM PRIVATE DRIVE <input type="checkbox"/> FROM STOP/ YIELD SIGN <input type="checkbox"/> WHEN TURNING LEFT			A-91304
OTHER <u>Disorderly Breach of Peace</u>			
IN VIOLATION OF <u>25.15</u> <u>STATE</u> STAT.			A-91304
SLIPPERY PAVEMENT <input type="checkbox"/> WET <input type="checkbox"/> RAIN <input type="checkbox"/> NIGHT	CAUSED PERSON TO DODGE <input type="checkbox"/> DRIVER <input type="checkbox"/> PEDESTRIAN	PD <input type="checkbox"/> PI <input type="checkbox"/> FATAL <input type="checkbox"/>	
DARKNESS { <input type="checkbox"/> Fog <input type="checkbox"/> RAIN <input type="checkbox"/> UNLIGHTED <input type="checkbox"/> CROSS	JUST MISSED ACCIDENT BY APPROX. _____	<input type="checkbox"/> PED <input type="checkbox"/> VEHICLE <input type="checkbox"/> HIT FIXED OBJECT <input type="checkbox"/> RIGHT ANGLE <input type="checkbox"/> HEAD ON <input type="checkbox"/> REAR END	A-91304
OTHER TRAFFIC PRESENT { <input type="checkbox"/> ONCOMING <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> SAME DIRECTION		<input type="checkbox"/> INTERSECTION	
HIGHWAY TYPE: <input type="checkbox"/> 2 LAN. <input type="checkbox"/> 3 LAN. <input type="checkbox"/> 4 LAN. <input type="checkbox"/> 4 LAN. DIVIDED	AREA: <input type="checkbox"/> RURAL <input type="checkbox"/> RESIDENTIAL <input type="checkbox"/> SCHOOL <input type="checkbox"/> INDUSTRIAL <input type="checkbox"/> BUSINESS		A-91304
THE UNDERSIGNED FURTHER STATES THAT HE HAS JUST AND REASONABLE GROUNDS TO BELIEVE, AND DOES BELIEVE, THAT THE PERSON NAMED ABOVE COMMITTED THE OFFENSE HEREIN SET FORTH, CONTRARY TO LAW. SWORN TO AND SUBSCRIBED BEFORE ME			

PR NO. 6690
 THIS 29 DAY OF DEC 1966
 (SIGNATURE OF OFFICER OR COMPLAINANT)
 (NOTARY PUBLIC) JAN (ADDRESS OF COMPLAINANT)
 COURT APPEARANCE 5 DAY OF JAN 1967 AT 9:00 A.M.
 I HEREBY AFFIX MY SIGNATURE WITH THE UNDERSTANDING THAT SUCH IS NOT A PLEA
 GUILTY, BUT TO CERTIFY THAT I HAVE RECEIVED A SUMMONS COPY OF THIS
 CITATION AND AGREE TO APPEAR AT THE TIME AND PLACE INDICATED.

1/16
RAIL POSTED \$POSTED BY: *B. J. Jones*RAIL TAKEN BY: *B. J. Jones*FINE IN THE AMOUNT OF \$
RECEIVED AS REQUIRED BY COURT SCHEDULE

CLERK

BOND FORFEITED BY: *300*CONTINUED TO: *6:00*REASON: *C. J. Jones*CONTINUED TO: *11:30*REASON: *1/30*CONTINUED TO: *1/30*REASON: *1/30*

ARRAIGNMENT, JUDGMENT, SENTENCE AND ORDER

JAN 30 1957

SAID DEFENDANT WAS ARRAIGNED FOR TRIAL ON
AND ENTERED A PLEA OF *NOT* GUILTY TO THE CHARGE AS SET FORTH HEREIN.AFTER HEARING THE EVIDENCE AND DULY CONSIDERING THE SAME, THE COURT
FINDS YOU, THE DEFENDANT, GUILTY OF SAID CHARGE; AND IT IS
ORDERED AND ADJUDGED THAT YOU, THE DEFENDANT, ARE GUILTY
AS CHARGED OF SAID OFFENSE, AS SET FORTH HEREIN.IT IS, THEREFORE, THE JUDGMENT, ORDER AND SENTENCE OF THE COURT
THAT YOU, THE DEFENDANT, BE:FINED \$ 90
JAILED FOR 90 DAYS
IN THE CITY JAIL AT ST. PETERSBURG, FLORIDA

SUSPENDED CONDITION

ATTEND TRAFFIC SCHOOL SESSIONSDRIVERS LICENSE REVOKED MONTHSNUMBER OF PENALTY POINTS ASSESSED 3

MORE ORDERED AND ADJUDGED IN OPEN COURT AT ST. PETERSBURG, FLA.

JAN 30 1957

JUDGE

HENRY C. JONES

ATTORNEY

PHONE

APPEAL BOND OF \$

25.14 DESTROYING, ETC., OF PUBLIC PROPERTY.

It shall be unlawful for any person maliciously or willfully to destroy, mutilate, injure or deface any of the public buildings, grounds, signs, sidewalks, electric lights, electric light poles or other property of the city.

It shall be unlawful for any officer or employee of any municipal department, or any other person, to destroy, injure, remove or disturb any bench, mark or monument in any street or public place in the city without first procuring a permit from the city manager. (Code 1955, ch. 25, § 12.)

[As to malicious injury to buildings and structures, see Florida Statutes, 1961, §§ 822.01 to 822.23. For state law as to trespass and injuring real property, see Florida Statutes, 1961, §§ 821.01 to 821.37.]

25.15 DISORDERLY CONDUCT.

Any person who shall make, aid, countenance or assist in making any improper noise, disturbance or breach of the peace or diversion tending to a breach of the peace; any person found in a disorderly house, house of ill fame or gaming house; any person who shall engage in or aid or abet in any fight, quarrel or other disturbance; any person who stands, loiters or strolls about in any place in the city waiting or seeking to obtain money or other valuable thing from others by trick or fraud or who aids or assists therein; any person who shall engage in any fraudulent scheme, device or trick to obtain money or other valuable thing in any place in the city or who shall aid or abet or in any manner be concerned therein; any person who shall window peep; or any person who shall engage in any indecent or obscene conduct in any public place shall be deemed guilty of disorderly conduct, and it shall be unlawful for any person to commit disorderly conduct. (Code 1955, ch. 25, § 13.)

[For authority to punish disorderly conduct, see Char., § 3, subsec. (o).]

Motion to Quash Information

IN THE CIRCUIT COURT FOR THE
SIXTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PINELLAS COUNTY

Fall term, 1966, Docket No. 16,743 Ct. Cr.

STATE OF FLORIDA

VS.

JOSEPH WALLER

Comes now the defendant JOSEPH WALLER, by and through his undersigned attorney, and respectfully moves that this Court quash the information filed on January 18, 1967 by the Honorable Clair A. Davis, State Attorney, in which the defendant Joseph Waller, together with other persons, was charged with Grand Larceny.

In support of this motion to quash the information, there is attached hereto an affidavit sworn by the defendant Joseph Waller, stating that he was tried in the Municipal Court of the City of St. Petersburg on January 30, 1967 and that, to the best of his knowledge and belief, the identical conduct alleged in the prosecution in that Court is now the sole basis of the allegations of the information above-mentioned filed on January 18, 1967 in this Court.

And the defendant Joseph Waller, by and through his undersigned attorney, respectfully asserts that the City of St. Petersburg, Florida is a subdivision of the State of

Florida; that the Municipal Court of that city partakes of the judicial power of the State of Florida, and that, for the purposes of applying the bar against double jeopardy, the trial of defendant in the Municipal Court of the City of St. Petersburg was a trial in a court of the State of Florida.

Since the defendant Joseph Waller has already been tried by the Municipal Court of the City of St. Petersburg on charges arising out of the conduct described in his affidavit attached, the State of Florida is barred from bringing him to trial again by reason of the same conduct, through the provisions against double jeopardy of the Constitution of the State of Florida, and through the Fourteenth Amendment of the Constitution of the United States.

JOHN D. DUE, JR.

Attorney for Joseph Waller

Affidavit of Joseph Waller

JOSEPH WALLER, being first duly sworn, deposes and says:

1. I am presently imprisoned in the City Jail at St. Petersburg, Florida as a result of sentences imposed upon me by the Municipal Court of the City of St. Petersburg on January 30, 1967 at a trial at which I was personally present.
2. At the trial, the prosecution alleged that on December 29, 1966 I had been a member of a group of persons who allegedly removed a mural from a wall of the St. Petersburg City Hall and carried it through the streets of the city until it was recovered by police during a scuffle in which the mural was damaged. I pled not guilty.
3. After hearing the evidence introduced by the prosecution in support of the above allegations, the Municipal Court found me guilty on the two charges of Destruction of city property and Disorderly breach of the peace, and sentenced me to be jailed for 90 days on each charge.
4. I am one of the persons accused in the Direct Information for Grand Larceny filed by Clair A. Davis, State Attorney on January 18, 1967 in the Circuit Court in and for Pinellas County, docket No. 16,743 Ct. Cr. I have pled not guilty. Trial has not yet taken place.
5. I am the person accused in each of the following three Direct Informations filed by Alan R. Williams, Prosecuting Attorney on February 13, 1967 in the Criminal Court of Record of Pinellas County: docket No. 7458 (unlawful assembly); docket No. 7460 (malicious destruction of public property); and docket No. 7494 (resisting arrest with-

out violence). I have pled not guilty to all of these charges. Trial has not yet taken place.

6. To the best of my knowledge and belief, the Direct Information for Grand Larceny mentioned in paragraph No. 4 above is based solely upon allegations that I engaged in the identical conduct alleged in the prosecution in the Municipal Court on January 30, 1967 mentioned in paragraph No. 2 above.

7. To the best of my knowledge and belief, the three Direct Informations for unlawful assembly, malicious destruction of public property and resisting arrest without violence mentioned in paragraph No. 5 above are also based solely upon allegations that I engaged in the identical conduct alleged in the prosecution in the Municipal Court on January 30, 1967 mentioned in paragraph No. 2 above.

8. I have personal knowledge of the matters presented in the first five paragraphs of this affidavit. The matters in paragraphs No. 6 and 7 are to the best of my knowledge and belief.

JOSEPH WALLER

(Sworn to April 24, 1967.)

Motion to Quash

[R-85]

IN THE CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT OF FLORIDA

IN AND FOR PINELLAS COUNTY

No. 16743

STATE OF FLORIDA

VS.

JOSEPH WALLER, JR.

GRAND LARCENY

The foregoing cause coming on this day to be heard upon Motion To Quash filed this 25th day of April, 1967 and the same having been argued by counsel for the respective parties and duly considered by the court, it is ordered that said Motion To Quash be and the same is hereby denied.

Done and ordered at Chambers this 25th day of April, A. D. 1967.

CHARLES H. PHILLIPS, JR.

Circuit Judge

**Excerpts From Testimony by Lynn Andrews, Called by
the State, on Cross-Examination, in *Florida v. Waller*,
No. 16743, Circuit Court, Sixth Judicial Circuit**

-18-

.

Q. I see, and how long have you been with the City?
A. Since 1961.

Q. '61, and since your first coming with the City of St.
Petersburg has this been continuously on the wall? A.
Yes, sir.

Q. Or mounted on the wall? A. Yes, sir, with the ex-
ception of one small corner.

Q. Which was re-glued. A. No, sir. It was the one that
was lifted up a few days before it was taken off the wall.

Q. Oh, was there a corner lifted up? A. Yes, sir.

Q. Oh, I didn't know about that. A. Yes, sir.

Q. How much of a corner, do you know? A. About
four inches each way.

Q. Do you know, at the bottom or— A. At the bottom
right-hand corner.

Q. Just the one corner. Would that be this corner over
here? A. This is correct.

-19-

Q. Mm, hmm, and the glueing process, was that this cor-
ner? A. No, it was all over it.

Q. All over it? A. Yes, sir.

Q. I notice there are horizontal lines here. Do you know
how those lines got on there? A. Those I couldn't say
how they got on there.

Q. Mm, hmm. As a matter of fact, as far as any of these
markings on here, I assume you know nothing about how
they got there? A. That would be hearsay.

Q. You mentioned something—excuse me—based upon your previous knowledge of having seen this mural, can you now look at it and see if there is any tearing or cutting of—either with a knife or by hand? Are there any tears in here that are different than what you saw on the wall?

A. The—as I pointed out, the difference that I see in this particular painting is—from when it was on the wall the 29th or thereabouts, is the yellowish or white areas scattered throughout the painting that appears to me to be the results of paint being rubbed off, knocked off, or in some manner taken off the painting. As I pointed out, the lower

—20—

right-hand corner, that that little white area was there on the 29th, about four inches square there, about four inches by four inches.

Q. This? A. No, sir, further down.

Q. This was like this? A. Just about four inches, sir. That's just about where the fold is, yes, sir.

Q. Just about here? A. Yes, sir, it was done a few days in advance of the painting being taken off, by some of the same defendants.

Q. Beg your pardon? A. This was done by some of the same defendants a few days prior to the painting being taken off the wall.

Mr. Davis: Your Honor, I move that that testimony be stricken on the basis that his prior testimony was to the effect that he had no knowledge as to who took it off.

Mr. Allweiss: I think he's testifying who lifted it off a few days before, Judge.

The Witness: I only testified to the corner being

lifted a few days before. This was by some of these same defendants, yes, sir.

The Court: And you were present then?

A. I was present, ran right by me.

Q. On this particular thing, did you see the person lift-

-21-

ing the flap? A. This fellow right here, the second one over.

Mr. Allweiss: Ask that the record reflect the witness has indicated the defendant Waller.

The Court: Let the record so reflect, and objection is overruled.

Q. And somebody else? A. Yes, I don't recognize the other one.

Q. I see. Now, you said they ran by you. A. Yes, sir.

Q. Where were you? A. I was on the first floor.

Q. Whereabouts on the first floor? A. I was just about the corner of the steps, just about where the steps go up to the second floor.

Q. I see. Who was with you? A. Don't recall.

Q. Were you by yourself? A. Well, I obviously don't recall if I was by myself or someone was with me.

Q. Mm hmm, were you about to go upstairs? A. I believe so. I believe this is the way that I was headed at that time.

Q. And you say a couple people ran by you? A. Yes, sir.

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Excerpts From Testimony by Phillip Hamilton, Called by the State, on Direct and on Cross-Examination, in Florida v. Waller, No. 16748, Circuit Court, Sixth Judicial Circuit

—69—

* * * * *

PHILLIP HAMILTON, a witness herein, being first duly sworn, testified in behalf of the State as follows:

Direct Examination by Mr. Allweiss:

Q. State your name, please, sir. A. Phillip L. Hamilton.

Q. What is your occupation? A. I work with the City Engineering Department.

Q. And where is your place of employment? A. City Hall building, St. Petersburg.

Q. Did you have occasion to be present on December

—70—

the 29th, 1966, approximately noon hour? A. Right.

Q. Do you know a Joseph Wall? A. Yes, sir.

Q. Is he in the courtroom today? A. Yes, he is.

Q. Would you point him out? A. Right there.

Mr. Jagger: Let the record show the—

The Witness: Which one, Joseph Walls?

Q. Joseph Walls. A. He's right here.

Q. Would you go over and put your hand on his shoulder so that we know who you are talking about? A. This one.

Q. All right, while you are there, do you know a Joseph Waller, Jr.? A. Yes, I do.

Q. Would you point him out? A. Right here.

Q. I would ask that the record reflect that the witness has indicated the defendants Joseph Wall and Joseph Waller, Jr.

The Court: Let the record so reflect.

Q. Is that the reason you were confused is because the names sound a little bit— A. Yes, I—

—71—

Q. Did you have occasion on the 29th day of December 1966 to see both of them in the City Hall? A. Yes, I did.

Q. Would you tell us what time approximately it was that you saw them? A. Approximately at twelve o'clock.

Q. Is that in the afternoon or morning? A. That was in the afternoon.

Q. All right, would you tell us what, if anything, you saw them doing and where it was that you were stationed when you saw them doing this thing you might have seen them do? A. I was at the top of the second floor about to descend the stair, and on the landing between the first and second floors I noticed this gentleman over here.

Q. Name him by name. A. Joseph Walls.

Q. Okay. A. Standing on the landing and leaning against the railing at the landing in front of the mural.

Q. All right, go ahead. A. At this time I turned my back, walked approximately thirty-five-forty feet down the hall, and I heard this tremendous ripping and tearing sound. I ran back to the top of the stairs, down the stairs, just in time to see the two defendants which I pointed out

—72—

descending the bottom step or the first landing with the mural between them.

Q. You talking about Waller and Walls? A. Waller and Walls.

Q. I show you—take a look at that State's Exhibit No. 1 for identification. Have you seen that before? A. Yes, sir, that was on the wall between the first and second floor. It was the St. Petersburg City Hall.

Q. Was that the thing they tore down? A. Yes, it is.

Q. Was it in that condition when they tore it? A. No, sir, it looked in good condition.

Q. Were there any cracks with some stuff in it like it's on there now? A. Not noticeable.

Q. And what did they do with the painting after they tore it down?

Mr. Davis: I object to that question, your Honor. There's no testimony or evidence that they did tear it down. As I understand the testimony, the witness was forty feet down the hall and heard a noise but did not see anybody tearing the mural down.

The Court: Objection's overruled. Your objection has no relevance to the question as I heard it.

—73—

Q. What did you see them do with it afterwards? A. They descended the stairs onto the first floor, ran down the hall and out the front door of the building.

Q. Now, while they were doing that can you tell me how they were treating this thing, how they were carrying it, if you know? A. They had the mural by the bottom two corners.

Q. Get down here and show us, Mr. Hamilton. A. They had the mural by these two corners down here and was running out the hall carrying one on this corner and one on that corner, and this portion of the mural was dragging on the floor.

Q. And they ran out the front door, right? A. Yes, sir.

Mr. Allweiss: Okay. Excuse me one second, Judge.

You may inquire.

Cross Examination by Mr. Jagger:

Q. Did you hear anybody say anything? Was there any conversation throughout all this? A. I didn't hear anything in the building, no.

Q. Mm, hmm. I believe it was correct that you—you say you saw Joseph Wall leaning on a railing, was that correct? A. Right.

Q. And where was he? A. He was on the landing be-

—74—

tween the first and second floor at the foot of the mural.

Q. Well, for some of the jurors who may not know you go up the stairs, that's a middle landing to get to the second floor? A. Right, mm, hmm.

Q. And you are talking about the landing between the first and second floor? A. Right.

Q. And he was just standing there, just leaning there? A. He was leaning on the railing. He had one hand and one arm on the railing.

Q. Was he by himself? A. Yes, sir.

Q. And this is when, when you were walking back to your office, when you walked down back to your office? A. I wasn't going back to my office. I was going just back down the hall. There was another gentleman standing there.

Q. Incidentally, did you, do you know, or have you ever seen Joseph Wall or Joseph Waller before that day? A. I had seen Mr. Waller in the building a couple times previous to that. I didn't know his name or anything at that time.

Q. I see. So when you say you saw Joseph Wall, that

—75—

was the first time you had seen him? A. That was the first time I had seen him.

Q. Yes. So you, as far as you walking over and identifying him— A. I saw him.

Q. —you have seen him— A. Mm, hmm.

Q. —and had occasion to look at photographs? A. I have seen him at the police station. I seen him while the group was parading down Central Avenue and 5th Street.

Q. Did you follow? A. Yes, sir.

Q. Mm, hmm. Now, when you walked away you say you heard some—how do you describe it—a noise? A. A tremendous noise. Apparently this picture was glued to the to the wall, and as it came loose the tearing of glue, paper, away from the wall made a tremendous sound. The halls echo quite a bit.

Q. Mm, hmm. A. And this was an awfully loud noise.

Q. Was a long continuous noise, would you say, or— as opposed to, you know— A. No, it wasn't an exceptionally short noise, but neither was it long. It was, oh, about as long as it would take to tear a piece of paper like

—76—

this, although in that distribution of time, in seconds, I can't place it.

Q. Mm, hmm, and this is when you ran back to what, the stairway? A. I—to the end of the hall. The stairway is in the center of the bottom and hallways go each way, and I went back along the hall, which would be to the north, in the north hallway.

Q. The north stairway you mean? A. I went down the hallway north from the stairs.

Q. I see. Then did you come back? A. Then I ran back and downstairs.

Q. Downstairs? A. Right.

Q. Did you stop at the top of the stairs and look down? A. I had my head down like this looking, you know.

There's a little balcony up here, and I had my head down, was looking under at the time I descended the stairs.

Q. And this is how you could see two people carrying this mural out? A. Right.

Q. Mm, hmm, was the face up? Was it just like this with two people on either corner? You said part was—it was dragging here? A. I was looking at the gentlemen at

—77—

the time. I was trying to place the faces in my mind. I don't remember if the painting was right side up or upside down.

Q. You don't recall the face of this painting? A. Not at that time. I—I would guess that it was face up.

Q. Mm, hmm. You don't recall whether it was in a different condition than it is now? A. It wasn't—I'm sure it wasn't this badly damaged at that time. It couldn't have been.

Q. You are sure it was not? A. I'm positive of that.

Q. Would it be your testimony that since that date, since it came off the wall, that someone else has—that this got damaged some other—through some other means from the time you saw it? A. I would say that it was damaged within the preceding fifteen or twenty minutes to the great extent that it is now.

Q. Mm, hmm. Did you have occasion to see any of these, see these horizontal lines coming across here and one line all down the middle? I assume that's from a fold. A. This is—

Q. But I don't know. A. This is really the first time I've had a chance to look at that painting. Mind if I stand up and look at it?

Q. Yes, sir, take a look at it. I'm interested in whether you saw these fold marks at any particular time before.

A. No, I haven't, fold marks. I don't think the fold marks were there.

Q. All right sir, you say you ran down the stairs and went out the door? A. That's right.

Q. Did you see some policemen there? A. No, I didn't, not immediately.

Q. See any policemen in the building? A. None in the building, no.

Q. You didn't see some right outside on the stairs? A. There was none on the stairway, no, not in uniform.

Q. You don't know Detective Homer Allen? A. I do now.

Q. You do now. You don't know whether he was there then? A. No, I did not.

Q. Mm, hmm. Incidentally, none of this was connected with your job there in City Hall? A. No.

Q. You weren't placed there to be watching anybody? A. No, I am with the Engineering Department. It was noon and I was on my way to lunch.

Q. Mm, hmm. I'm—there's one other thing: Did you see Mr. Wall or Mr. Waller take out a knife and try to cut this in any way or take out a match or cigarette lighter and try to burn this, or did anyone, you know, do anything in your presence to destroy this mural or cut it? A. Not while they were in the building, and immediately after leaving the building, they joined a large crowd, and I couldn't see what happened down there at this time.

Q. But in your presence you saw no one try to cut this mural up or burn it? A. No, I—

Q. Did you hear anybody, any conversation? A. There was considerable yelling and—out front, and what they were going to do with the picture.

Q. What was this? A. They were going to parade it around. They had it, they got it, "Now we got it. We are going to take it to colored town," or something.

Q. Take it to the black community? A. Something of that nature, yes.

Q. Was there—in all that conversation you heard, did you hear anyone say that they were going to cut it up or burn it or destroy it in any way? A. I did not hear them say they were going to, no.

—80—

Mr. Jagger: All right, thank you.

Cross Examination by Mr. Davis:

Q. If I may, just one question: I believe you testified that when you saw these two gentlemen running out the building dragging this behind them, is that correct? A. Yes, sir.

Q. They were holding it by the bottom two corners, is that your testimony? A. Right.

Q. It just bothered me, and I hope you can straighten this out for me: If you didn't know they were carrying it right side up or upside down, how did you know that they were carrying it by the bottom two corners? A. Because of the size of the picture. They couldn't have gotten hold of the top corners.

Q. This was just an assumption they were carrying it by the bottom? A. Right.

Q. The same as you assume they tore it off the wall, because you did not see them do that, either? A. That's right, sir.

Mr. Davis: All right, sir.

Cross Examination by Mr. Peterman:

Q. Mr. Hamilton, did I understand you to say that this

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is the first time that you have seen this painting since that day? A. The first time I have seen it opened up. It's been—I've seen it in paper a couple of times. I don't believe I have seen it unfolded.

Q. Were you a witness— A. Sir, I have to beg your pardon. I did see that painting.

Q. Thank you. A. Right in City Court.

Q. So you have seen it again? A. Yes, sir, City Court. It wasn't on display like it is now.

Q. Yes. Okay. Now when they carried this painting out, you can't remember whether it was right side up or— A. It seems to me it was right side up, but like I say, I was looking at the faces and features and clothing of the people. I was trying to place their—them in my mind as the people who had it.

Q. Now you stated that after you saw them you ran down the north hall and then you came back, is that correct? A. That's right.

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**Excerpt From Testimony by Phillip Hamilton, Called
by the State, on Recross Examination, in *Florida v.
Waller*, No. 16743, Circuit Court, Sixth Judicial
Circuit**

—96—

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Q. Now, at any time did you recognize John Bryant with his hand on the painting? A. No, sir, like I said before, I can't tell which ones had their hands on the painting, which ones didn't. If I may say, it's like going to a football game with the eleven players on the field, you can't tell after the game that all of them had not handled the football.

Q. How do you recognize that John Bryant was with the group? A. I was trying to place faces, trying to place faces and picture them in my mind.

Q. Have you viewed any pictures since this as to identification? A. Yes.

Q. Where did you view these pictures? A. At the last court case in St. Petersburg.

Q. Did you at the time of the court case in St. Petersburg, did you make the statement that you assume that all of the defendants were together because they were Negroes?

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Excerpt From Testimony of Marjorie Buswell, Called by the State, on Direct and on Cross-Examination, in Florida v. Waller, No. 16743, Circuit Court, Sixth Judicial Circuit

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MARJORIE BUSWELL, a witness herein, being first duly sworn, testified in behalf of the State as follows:

Direct Examination by Mr. Allweiss:

Q. State your name, please, ma'am. A. Marjorie Buswell.

Q. And what is your occupation? A. Clerk 2 at City Hall.

Q. Where, what City Hall is that? A. In St. Petersburg.

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Q. Is that in the City of St. Petersburg, Pinellas County, Florida? A. Yes, sir.

Q. Were you so employed on December the 29th, 1966? A. Yes, sir.

Q. Did you have occasion to observe any incident in City Hall on the—approximately noon-time on the 29th day of December 1966? A. Yes, sir.

Q. Would you tell us what, if anything, you observed at that time? A. I had just gotten off the elevator coming up from the basement, and I saw two men run up from the front door up through the steps leading up to the second floor landing.

Q. Are these two men in the courtroom today? A. Yes, sir.

Q. Would you point them out, please? A. Mr. Waller and Mr. Walls over there with the red sweater.

Q. Would you point out each one, please, ma'am, so I know who you are indicating. You can indicate by color of the clothes or something like— A. Mr. Waller has the brown suit with the light tan shirt, and Mr. Walls has the red sweater on, Mr. Walls.

Mr. Allweiss: If the Court please, I would ask
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that the record reflect that the witness has indicated the specific defendants Joseph Waller, Jr. and Joseph Wall.

The Court: Let the record so reflect.

Q. In that regard, Mrs. Buswell, what, if anything, did you see them do? A. Well, I walked over to the steps, and they were standing up by the painting, and they had their hands on the two lower corners, so I spoke to them, and they looked down at me.

Q. What, if anything, did you say to them? A. Well, first I said, "Leave that alone," and they looked down, and they went on with what they were doing.

Q. What were they doing? A. Well, they were attempting to lift the corners, I believe.

Q. All right. A. And then finally I asked them to stop it, again, and with that, why, there was a big noise, and they just jerked it right off.

Q. All right, and then what did they do, if anything? A. Well, then they were rather in a hurry, and they each had a piece of it, and ran down the steps and outside.

Q. With what? A. The painting.

Q. All right, I would ask you to step down and take a

—105—

look at State's Exhibit No. 1 for identification. Would you do that, please, ma'am?

Can you recognize and identify that particular painting that's lying on the floor over there? A. Well, that's the mural.

Q. Is that the one they took down? A. Yes.

Q. Was it in that condition when they took it down, or before they took it down? A. Before they took it down it was not in that condition.

Q. In what condition was it before they took it down? A. Well, it was a complete painting with no crevices or mark on it at all.

Q. Okay. Resume your seat, please, ma'am.

How long have you worked at City Hall? A. Five years this July.

Q. Had occasion to see that painting most every day? A. Yes, sir.

Q. Now, what did they do when they were dragging it down? What did they do with it? Where did they go?

A. They went right outside the building.

Q. Outside the front door? A. Yes.

Q. That was the last that you saw of them? A. Yes.

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Mr. Allweiss: You may inquire.

Cross Examination by Mr. Jagger:

Q. Were you able to see the mural when they came by you? A. Yes, I noticed it. It's pretty big.

Q. Mm, hmm. Was the face up like it is now, or was it turned over? A. Well, if you take two men and try to carry something out that size, it was all crumpled up.

Q. What do you mean? A. Well, I mean they didn't take it out as a big—as it stands on the floor now. In other words, they naturally had to more or less crunch it together in order to get it—get it out of the building.

Q. They didn't— A. (Continuing) Like you would be more or less folding up a sheet or something if you were in a hurry.

Q. I see. It wasn't drug on the floor? A. Not at that time, no.

Q. I'm referring to the time coming down the stairs. A. Well, yes, down the stairs, but once they passed me on the floor level it was not on the floor at that particular time.

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**Excerpt From Testimony of B. J. Atkins, Called by the
State, on Direct Examination, in *Florida v. Waller*,
No. 16743, Circuit Court, Sixth Judicial Circuit**

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dragging a large piece of canvas in the east crosswalk of Eighth Street. They were running. They would run for a few steps and then walk for a few steps and shake the canvas high in the air and yell. Then they would run for a while and jerk it back and forth and shake it up in the air, and having previous knowledge of previous reports of what had occurred, I made a right turn at Eighth Street, drove up to First Avenue South in front of the two, alighted from the cruiser. At that time one of the men had dropped the corner of the canvas, was running west. Joseph Waller still had the canvas in his hand, started running west. I gave chase, chased him across First Avenue and up to about fifty feet west of Eighth Street on First Avenue before I caught up to him.

Q. Is that the north or south side of St. Petersburg? A. That is on the south side, south of—one block south of Central Avenue.

Q. Is that near Webb's City? A. It is.

Q. Go ahead. A. Right on the corner. As I was chasing him, he was swinging the canvas back and forth, back and forth. As a matter of fact, one time I stepped on it as he threw it under my feet. As I caught up to him—I was running—right alongside the sidewalk there's a concrete wall about six feet high, and I got up to him. He wouldn't run

any further, so he would throw the canvas in between he and I, pull around, just throw it. I'd try to go around the canvas to get to him, and he'd re-throw the canvas back the other way to keep it between us, and he did this several times before I finally did get my hands on it, and I told him several times he was under arrest. I hollered at him.

Q. You placed him under arrest? A. Yes.

Q. Did you confiscate the canvas? A. Yeah, we took the canvas at that time.

Q. Would you come down here? Would you look at State's Exhibit No. 1 in evidence, and will you tell me whether this is the same canvas that you describe as being thrown and switched around and so forth? A. Yes, sir, that's the same canvas.

Q. You have placed your initials on it? A. I did with a small star-like mark above it.

Q. You took it down to the Police Station? A. At the time I carried the canvas back to Eighth Street and First Avenue South, folded it up, put it in the cruiser, and carried it to the station, marked it and turned it in to the evidence room.

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**Excerpt From Testimony of B. J. Atkins, Called by the
State, on Cross-Examination, in *Florida v. Waller*,
No. 16743, Circuit Court, Sixth Judicial Circuit**

—238—

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and then this way. One time like that, and then I folded it one more time across here like that, and that's the position that I put it in the back.

Q. Okay, let's take—let's take—let's take it apart again.

A. Okay.

Q. Now, would you lift up that end?

Whoops. (State's Exhibit No. 1 slipping from counsel's grip.)

Okay, let it down now.

How many times did you to your own knowledge—has this painting been folded and unfolded? A. I know of one other time, at the preliminary hearing.

Q. You—we just folded it and unfolded it, did we not, you and I? A. Wait a minute, I take it back. The City Court trial. I believe—

Q. Yeah, that's right. A. I believe it was unfolded there, preliminary hearing and then that.

Q. Do you remember how it was mounted in the City Court trial? A. How it what?

Q. How it was mounted, how it was displayed? A. Yes, I believe it was hung over a blackboard easel.

Excerpt From Testimony of Homer G. Allen, Called by the State, on Direct Examination. (Court-reporter's transcript, Vol. II, pages 244-246, bound as Vol. III of transcript of record prepared by Clerk of Circuit Court.)

—244—

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Q. You were in your car? A. Yes, sir.

Q. In what direction were they heading? A. They were heading northbound on Ninth Street.

Q. Northbound. All right, and then you lost sight of them? A. Yes, sir.

Q. And where did you go after that? A. I went to the station. I saw Lieutenant Atkins and Captain Smith.

Q. Don't tell us what conversation you had. What did you do after you arrived at the police station? A. I went back into the detective bureau. I was working on some other case.

Q. Did you go anywhere after that? A. Yes, sir.

Q. Where was that? A. I was sent down to the City Hall to observe what was taking place.

Q. What, if anything, did you see at City Hall with regard to these six defendants? A. I saw eight to ten col-

—245—

ored people on the steps, and they were chinning around there carrying signs, and then all of a sudden I observed Walls and Waller come out of the front door of City Hall with the mural.

Q. All right, are Walls and Waller in the courtroom? A. Yes, sir.

Q. Would you go out and point them out, please? A. Yes, sir.

Q. Wallers and Wall.

Ask that the record reflect that the defendant—the witness has indicated the defendants Waller and Wall.

The Court: Let the record so reflect.

Q. What did you see Waller and Wall doing? A. Joseph Waller was carrying the sign on the south side, which would be the south direction—

Q. I'm talking after they came out of City Hall, what did you see them— A. They were dragging the sign out, pulling the sign out. They were each holding it by the top corner and dragging it along.

Q. Did you say a sign? A. The mural.

Q. Is that mural in the courtroom today? A. Yes, sir, down there on the floor in front of me.

Q. You are indicating State's Exhibit No. 1 in evidence,

—246—

this thing right here? A. Yes, sir.

Q. All right, what were they doing right now? A. They were yelling and shouting, and as soon as they got to the foot of the steps onto the sidewalk, the other group got around them and they proceeded southbound on Fifth Street to the alley.

Q. Were those four defendants in that group? A. Sir?

Q. Were the other four defendants in the group, that are in the courtroom? A. Yes, sir.

Q. Will you step down here, Detective Allen?

I'd like for illustration purposes for you to describe these photographs. I show you State's Exhibit No. 3 in evidence. Would you turn it toward the jury and so all jurors can see—

It might be well if some of them gather around, Judge—

And tell them what this picture depicts? A. This is the mural.

Mr. Allweiss: Can each of you see that?

Juror No. 2: No, we cannot.

Mr. Jagger: If the Court please, I'm not sure; I think the pictures speak for themselves—photographs.

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**Excerpt From Testimony of Defendant, Joseph Waller,
Jr., on Redirect Examination, in *Florida v. Waller*,
No. 16743, Circuit Court, Sixth Judicial Circuit**

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—421—

Redirect Examination by Mr. Due:

Q. Mr. Waller, is it a fact you have been punished already for the act of removing this mural? A. I'm sorry, I can't—

Mr. Mensh: Just a minute. I object to the question being outside the scope of anything covered by cross, your Honor.

The Court: Objection sustained on that and other grounds, and the jury's instructed to disregard the question.

Q. Do you know the difference between removing a mural and stealing a mural?

Mr. Mensh: If it please the Court, I'm going to object again. There's no presumption to the being on the wall.

Motion for New Trial

[R-128-129]

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

Ct. Cr. 16,743

STATE OF FLORIDA

VS.

JOHN WESLEY BRYANT; LEMUEL GREEN; CRAWFORD LOUIS
JONES; JOSEPH WALLER, JR.; JOSEPH WALL; TOMMY
WILLIAMS

COMES NOW the defendant, JOSEPH WALLER, by and
through his undersigned attorney and files this his Motion
for New Trial and as grounds therefore shows;

1. That the verdict is contrary to the law.
2. That the verdict is contrary to the evidence.
3. That the verdict is contrary to the weight of the evidence.
4. That the Court erred in failing to direct a verdict at the close of the State's case and at the close of the defense case.
5. That the Court erred in failing to define and explain all of the elements constituting Grand Larceny.

6. That the Court erred by granting in part the State's requested instruction No. 1.

7. That the court erred in failing to give the instruction requested by defendant Joseph Wall, and adopted by Joseph Waller, said instruction No. 1, 2, and 3.

8. That the Court erred in failing to give defendant Joe Waller's requested instruction No. 1, 2, 4, 5, 6, 7, and 8.

9. That the Court erred in denial of the Defendant's motion to Quash.

10. That the Court erred in denial of Defendant's motion for a direct verdict.

11. That the Court erred in denial of Defendant's motion for a continuance.

12. That the Court erred in excessively interrupting Counsel for the Defendant in his examination and cross-examination of witnesses.

13. That the Court erred in limiting Counsel for the defendant in his direct examination of witnesses Talmadge Rutledge and Dr. Clark Bouman.

FRANK PETERMAN
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Attorney for the Defendant
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By: JOHN D. DUE, JR.

Motion to Reconsider Sentence

[R-139-140]

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT OF THE STATE
OF FLORIDA IN AND FOR PINELLAS COUNTY

Ct. Cr. 16,743

STATE OF FLORIDA

VS.

JOSEPH WALLER, JR.

Comes now the defendant in the above-captioned matter and moves this Honorable Court to reconsider the said sentence, vacate, or modify, or correct the sentence of Joseph Waller, Jr., on the following grounds:

1. The determination of sentence is based upon insufficient evidence.
2. The Court erred in denying defendant's motion that the pre-sentence and sentencing be suspend.
3. The Court erred in denying defendant's motion that the pre-sentence investigation report be made part of the record.
4. The Court erred in passing a sentence on grounds and reasons which go "far afield."

5. The Court erred in passing a sentence on grounds and reason which are irrelevant, prejudicial and unfair.
6. The Court erred in passing a sentence on grounds which are dehors the records.
7. The Court erred in denying defendant's motion that a pre-sentence investigation be made which is accurate, fair, and prompt.
8. The Court erred in arbitrarily denying the right to probation.
9. The Court erred in denying consistent sentence to the defendant in relation to the co-defendant, Jody Wahl.
10. The Court erred in denying the defendant's motion and request for reasons and grounds for the sentence of Joseph Waller which would be expressed in terms of equality or individualization in relation to co-defendant Jody Wahl.

Wherefore, the defendant, Joseph Waller prays this Honorable Court to:

1. Reconsider the said sentence, and vacate, or modify, or correct the sentence of Joseph Waller.
2. Hold a special hearing immediately for the purpose of hearing and ruling on this motion within 2 days on the filing of this motion, or, in the alternative:
 1. Grant the motion requested
 2. Deny the motion requested

3. Recite that Counsel has requested the disposition of this motion within 2 days and that this request is denied.

FRANK PETERMAN (Attorney)
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St. Petersburg, Florida

JOHN D. DUE, JR. (Attorney)
540½ West Brevard Street
Tallahassee, Florida

CERTIFICATION (omitted in printing)

**Motion to Vacate and Set Aside Judgment, Conviction
and Sentence—Pursuant to Criminal Procedure
Rule #1**

[R-143-144]

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT OF THE STATE
OF FLORIDA IN AND FOR PINELLAS COUNTY
Ct. Cr. 16,743

STATE OF FLORIDA

VS.

JOSEPH WALLER

To the Honorable Judge of the Above Entitled Court:

Comes now the defendant in the above-captioned matter and moves this Honorable Court to void the sentence of Joseph Waller, and that the Court order the discharge of the defendant from custody or his release from custody upon nominal bail within three (3) days from the filing of this motion, in order to preserve any rights which may lie on behalf of the defendant under the State Corrective Process, on the grounds that the sentence and continuing custody of the defendant, Joseph Waller, is invalid, illegal, and unconstitutional, constituting denial of rights under the Declaration of Rights of the Florida Constitution, and due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution for the following reasons:

1. Those reasons and grounds stated in the Motion to Quash and Motion for a directed verdict and Motion for a new trial which are hereby incorporated and adopted.
2. That said sentence was passed without a pre-sentence investigation and therefore is invalid.
3. That said sentence was passed without a pre-sentence investigation which is true, prompt, or fair, and therefore is invalid.
4. That the grounds and reasons for the sentence go "far afield" are therefore without authority and are invalid.
5. That the grounds and reasons for the sentence are irrelevant, prejudicial, and unfair, and therefore without authority and are invalid.
6. That the grounds and reasonsⁱ for the sentence are based on the pre-sentence report which the Court had ruled invalid and inadmissible on the grounds that it was unfair, and inaccurate, thereby denying the defendant right to assess, right to complaint, and to cross-examine the informants to and for the pre-sentence investigation report.
7. That the denial of probation was arbitrary in that there was no consideration to the pre-sentence and the desirability of probation in the light of the pre-sentence investigation report.
8. That the Court refused to give consistent sentences to defendant, Joe Waller co-defendant Jody Wahl, and to make no distinction between the defendant co-defendant, considering their background.

9. That the Court refused to place on the record the reasons for the sentence of defendant Joseph Waller in terms of equality or individualization, in relation to co-defendant, Jody Wahl.

WHEREFORE, the Defendant Joseph Waller prays this Honorable Court to:

1. Void the sentence passed on Joseph Waller.
2. Hold a special hearing immediately for the purpose of hearing and ruling on the motion to void within 2 days on the filing of this motion, or in the alternative:
 1. Grant the motion requested.
 2. Deny the motion requested or,
 3. Recite that Counsel has requested the disposition of this motion within 2 days and the request is denied.

FRANK W. PETERMAN
Attorney Frank Peterman
1407 22nd S. Street
St. Petersburg, Florida

JOHN D. DUE, JR.
Attorney John D. Due, Jr.
540½ West Brevard Street
Tallahassee, Florida

CERTIFICATION (omitted in printing)

Motion to Augment Record, and Order of Circuit Judge Denying Motion, December, 1967. [Included as part of item 2 of record of Supreme Court of Florida; individual pages are unnumbered.]

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA
IN AND FOR PINELLAS COUNTY

Cir. Ct. Cr. 16,743

STATE OF FLORIDA,

VS.

JOSEPH WALLER, JR., *et al.*

The Appellant JOSEPH WALLER, JR., respectfully shows unto the Court that the record on appeal has now been completed and fails to include the pre-sentence investigation report, although it was made clear to the Clerk that Appellant desired said pre-sentence investigation report to be included in the record as a predicate for arguing this appellant's assignment of error directed to the severity of the sentence.

WHEREFORE, appellant prays the Court to enter its Order directing the Clerk to augment the record on appeal by including therein the pre-sentence investigation report sub-

mitted to the Court in this cause before sentence was passed upon the appellant.

GARDNER W. BECKETT, Jr.
Of Counsel for Appellant
Joseph Waller, Jr.

GARDNER W. BECKETT, Jr.,
52 Sixth Street South,
St. Petersburg, Florida

LESLIE H. LEVINSON,
2925 N. W. 12th Place,
Gainesville, Florida 32601

Attorneys for Appellant

CERTIFICATE OF SERVICE (omitted in printing)

**Order Denying Motion to Augment
Record on Appeal**

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA
IN AND FOR PINELLAS COUNTY

Cir. Ct. Cr. 16,743

STATE OF FLORIDA,

VS.

JOSEPH WALLER, JR., *et al.*

Upon consideration of the Appellant's Motion to Augment the Record on Appeal by including therein the pre-sentence investigation report delivered to the Court prior to the sentencing of the appellant in this cause, it is

ORDERED that said Motion be and the same is hereby denied.

DONE AND ORDERED in Chambers, this 28th day of December, 1967.

CHARLES H. PHILLIPS, JR.
Circuit Judge

**Opinion of District Court of Appeal of Florida
Second District**

IN THE DISTRICT COURT OF APPEAL OF FLORIDA,
SECOND DISTRICT, JULY TERM, A. D. 1968

Case No. 67-426

JOSEPH WALLER, JR.,

Appellant,

—v.—

STATE OF FLORIDA,

Appellee.

Opinion filed August 28, 1968.

Appeal from the Circuit Court for Pinellas County;
Charles M. Phillips, Jr., Judge.

LESLIE HAROLD LEVINSON, Gainesville, and
GARDNER W. BECKETT, JR., St. Petersburg,
for Appellant.

EARL FAIRCLOTH, *Attorney General*, Tallahassee, and
WILLIAM D. ROTH, *Assistant Attorney General*, Lakeland,
for Appellee.

PER CURIAM.

The appellant appeals a judgment and sentence imposed upon him after a jury found him guilty of the crime of grand larceny.

The appellant was one of a number of persons who removed a mural which was on a wall of the City Hall in St. Petersburg, Florida. After the mural was removed the appellant, together with others, carried it through the streets of St. Petersburg until they were confronted by police officers who recovered it after a scuffle with the appellant and others. When the mural was recovered by the police officers it was in a damaged condition.

The appellant was charged by the City of St. Petersburg with the violation of two ordinances, to-wit: destruction of city property and disorderly breach of the peace. Trial was held in the municipal court after which the appellant was found guilty on both violations and sentence was imposed.

Thereafter an information was filed against the appellant charging him with grand larceny. This information was based on the same acts of the appellant as were involved in the violation of the two city ordinances. The appellant filed a motion to quash the information on the ground that the prosecution under the information was barred by the prior convictions of the appellant in the municipal court. Said motion was denied and the appellant filed a suggestion for writ of prohibition in the Supreme Court of Florida. The Supreme Court denied said petition without opinion. *Waller v. Circuit Court for the Sixth Judicial Circuit, in and for Pinellas County, Fla.*, 1967, 201 So.2d 554.

On appeal here the appellant contends that he was twice put in jeopardy since prior to his conviction of grand larceny he had been convicted by the municipal court of an included offense of the crime of grand larceny.

Assuming but not holding that the violations of the municipal ordinances were included offenses of the crime of

grand larceny, the appellant nevertheless has not twice been put in jeopardy, because even if a person has been tried in a municipal court for the identical offense with which he is charged in a state court, this would not be a bar to the prosecution of such person in the proper state court. This has been the law of this state since 1894, as is established in the case of *Theisen v. McDavid*, 34 Fla. 440, 16 So. 321. The Florida Supreme Court has followed the *Theisen* case, *supra*, throughout the years and as recently as July 17, 1968, in *Hilliard v. City of Gainesville, Florida*, Case No. 37,238, reaffirmed the *Theisen* case and stated as follows:

"This double jeopardy argument has long been settled contrary to the claims of the petitioner. We see no reason to recede from our established precedent on the subject. Long ago it was decided that an act committed within municipal limits may be punished by city ordinance even though the same act is also proscribed as a crime by a state statute. An offender may be tried for the municipal offense in the city court and for the crime in the proper state court. Conviction or acquittal in either does not bar prosecution in the other."

The appellant next contends that the mural was a permanent fixture on the wall of the City Hall and therefore was "real property" and not subject to larceny. Appellant relies on the fact that the painting or mural was affixed to the wall by an adhesive and that this made it a permanent fixture and therefore a part of the real property.

We cannot agree with the appellant's position and the record on appeal clearly establishes that the painting or

mural was that type of property which may be a subject of larceny.

Next, the appellant contends that in view of the fact that the mural was removed in full daylight, in the presence of police officers and that appellant and the mural remained in the view of police officers until it was recovered, that as a matter of law the requisite felonious intent required to establish the crime of larceny was not shown.

With this we do not agree. The trial court properly instructed the jury on the essential elements of the crime of larceny and the question of intent required to establish that crime was properly submitted to the jury and resolved by it against the appellant.

The appellant's other assignments of error and points on appeal have been carefully considered and found to be without merit. Among these assignments of error and points on appeal, the appellant has contended that the trial court erred not only in refusing numerous requested instructions but also in the instructions which were given to the jury. We have reviewed the entire instructions and find that the court properly and correctly instructed the jury in this case.

For the foregoing reasons the judgment and sentence is affirmed.

LILES, C.J., and PIERCE and HOBSON, JJ., CONCUR.

Order Denying Petition for Rehearing

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA

IN AND FOR THE SECOND DISTRICT

JULY TERM, A. D. 1968

Tuesday, September 17, 1968

Case No. 67-426

JOSEPH WALLER, JR.,

vs.

STATE OF FLORIDA,

Counsel for Appellant having filed in this cause a
Petition for Rehearing and the same having been considered
by the Court, it is

ORDERED that the said Petition be and the same is hereby
denied.

The application of Appellant to delay issuance of
Mandate is denied.

**Order by Supreme Court of Florida, Directing Circuit
Court to Release Defendant on Bond,
November 6, 1968**

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1968

Wednesday, November 6, 1968

Case No. 37,868

JOSEPH WALLER, JR.,

Petitioner,

VS.

STATE OF FLORIDA,

Respondent.

Upon consideration of petitioner's motion under Rule 3.9, Florida Appellate Rules, requesting this Court to review an order of the Circuit Court, Sixth Judicial Circuit in and for Pinellas County, Florida, revoking bail, the motion is granted and said Circuit Court is hereby directed to order the petitioner released under his original appeal bond pending final determination of the Petition for Writ of Certiorari filed in this Court.

**Order by Supreme Court of Florida Denying Writ of
Certiorari, December 4, 1968**

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1968

Wednesday, December 4, 1968

Case No. 37,868

District Court of Appeal, Second District

JOSEPH WALLER,

Petitioner,

—VS.—

STATE OF FLORIDA,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

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1969
No. 24
x29

Supreme Court of the United States

No. 846 -----, October Term, 19 68

Joseph Weller, Jr.,

Petitioner,

v.

Florida

Order allowing certiorari. Filed June 23 -----, 19 69.

District Court of Appeal

The petition herein for a writ of certiorari to the ~~Supreme Court~~ of the State of Florida,

~~6th~~ Second Circuit, is granted, and the case is placed on

the summary calendar and set for oral argument immediately

following No. 1099.

And it is further ordered that the duly certified copy of the transcript of the proceedings below

which accompanied the petition shall be treated as though filed in response to such writ.